

To: McCabe, Catherine[McCabe.Catherine@epa.gov]
Cc: Prince, John[Prince.John@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]
From: Mugdan, Walter
Sent: Mon 3/6/2017 11:14:37 PM
Subject: For the Weekly Report to HQ

Catherine,

Next week Region 2 will send letters to a number of PRPs offering them cash-out settlements to resolve their liability for the work and costs associated with the cleanup of the lower 8.3 miles of the Lower Passaic River. FOIA exemption (b)(5)(1) [predecisional and deliberative]
FOIA exemption (b)(5)(1) [predecisional and deliberative]

Sending these settlement offer letters may trigger one of the criteria enumerated in your March 3 email, copied below. Specifically, the action may result in “significant public attention on the proposed decision (i.e., the decision about which PRPs are being afforded this settlement opportunity, and the determination of the proposed settlement amounts).

In 2016, all the PRPs were informed of the outlines of our planned enforcement strategy for the Passaic. The strategy included our intention to have the design work done by Occidental, rather than by a large group of PRPs; as you know, we accomplished that with the issuance of the administrative consent order last September. The information we shared with the PRPs last year also included our plan for offering cash-out settlement to certain categories of PRPs. The letters that will go out soon will start that process. Contemporaneously, the remaining PRPs will be informed that we have made these settlement offers. Thus, all the PRPs will be aware of what is going on. It is possible that some of them may be dissatisfied with one or another aspect of our approach, and may express their dissatisfaction to the Administrator, or to members of Congress. The press may also learn about our settlement offers.

Our enforcement strategy, and these settlement offers in particular, were reviewed and approved by OECA and DOJ. This also went through the OECA review with Justin Schwab of the transition team.

Set out below is a proposed paragraph for inclusion in the next Weekly Report to HQ. This draft paragraph has been reviewed by ERRD and ORC.

Region 2 will shortly send to approximately 20 potentially responsible parties (PRPs) an offer to settle their Superfund liability for a portion of the Passaic River in New Jersey. In March, 2016 EPA issued a Record of Decision (ROD) selecting the cleanup plan to be implemented in the lower 8.3 miles of the Lower Passaic River, part of the Diamond Alkali Superfund site in Newark, NJ. The selected remedy involves dredging and capping heavily contaminated sediments in this stretch of the river, at an estimated cost of \$1.4 billion. In September, 2016 EPA entered into an Administrative Consent Order with Occidental Chemical Corp., a major PRP, pursuant to which the company agreed to carry out the design of the selected cleanup option; that design work is estimated to cost \$165 million and take about four years to complete. EPA has identified over 100 PRPs for the Passaic River. However, EPA decided to ask Occidental to carry out the design work alone, rather than try to work with a large group of PRPs on a matter so complex. (To date, our working relationship with Occidental has been excellent.)

FOIA exemption (b)(5)(1) [predecisional and deliberative]

FOIA exemption (b)(5)(1) [predecisional and deliberative] The settlement offers we will shortly be sending out represent the first step in implementing this approach. The offers have been reviewed and approved by EPA's Office of Enforcement & Compliance Assurance (OECA), and we are currently awaiting completion of review by the U.S. Department of Justice. OECA and Region 2 have also alerted Justin Schwab of the transition team of our intent to make the offers. To ensure external transparency, we will be informing the remaining PRPs – i.e., those not being offered a cash-out settlement in this first round – of the settlement offers we are now making, and what they can expect in terms of our next steps. There is strong public and press interest in the progress of the Passaic River cleanup and the Diamond Alkali Superfund Site. It is possible that our sending these settlement offers, along with our accompanying letters to the other parties, may generate significant public attention.

From: McCabe, Catherine
Sent: Friday, March 03, 2017 9:26 AM

To: R2 Division Directors <R2_Division_Directors@epa.gov>
Cc: R2 Deputy Division Directors <R2_Deputy_Division_Directors@epa.gov>
Subject: weekly report to the Administrator

Following up on the request I just sent to DDs for weekly reports, please note that the Administrator is particularly interested in any matters with the following characteristics – we are now required to check with HQ first before making any significant decisions that raise these issues:

Actions with significant regulatory or enforcement effects, proposed or final, which would do any of the following:

- ☐ Limit the flexibility of the states
- ☐ Limit energy resource use
- ☐ Impose significant costs on industry or commerce
- ☐ Likely result in significant public attention on the proposed decision

Please flag these issues early for Walter and me, and be sure to note them on packages sent to the ORA for signature or approval. Thanks!